



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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The Evidence Trap: Establishing Custodial Torture And India's Accountability Burden

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ABSTRACT:

Custodial torture violates constitutional guaranties under Article 21 and is an ingrained systemic failure within the Indian criminal justice system. (Anon., 1950) This paper explores the "evidence trap" an unequal legal situation in which the victim bears the burden of proving custodial torture beyond a reasonable doubt while the police maintain exclusive territorial control over the institutional machinery that produces, records, and preserves corresponding evidence. This study shows through a doctrinal analysis of the Bharatiya Sakshya Adhiniyam, 2023 (BSA), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Nyaya Sanhita, 2023 (BNS) that Section 109 BSA is insufficient to break lock-up secrecy if the Law Commission's proposed Section 114B presumption is left out. (India, 1985) (india, 1994) (Adhiniyam, 2023) (Sanhita, 2023) At the same time, Section 63 BSA electronic certification obstacles, forensic deference, and infrastructure sabotage neutralize medical examinations under Section 53 BNSS and CCTV mandates under Paramvir Singh Saini. (Adhiniyam, 2023) (Anon., 2023) (Paramvir Singh Saini v Balljit Singh & Ors, 2021) The system achieves a conviction rate below two percent, which turns constitutional remedies under Articles 32 and 226 into a compensatory mechanism that replaces individual criminal liability with state monetary solatium. (Anon., 1950) (series, 2004) This is made worse by station diary falsification, compromised witness protection, and executive sanction barriers under Section 218 BNSS. (Anon., 2023)

HYPOTHESIS:

The legal system in India unfairly sets the burden of proof on victims while police have control over important evidence. Evidence tampering, CCTV manipulation, and problems with medical records weaken current protections under the BSA and BNSS. Sanction requirements

witness intimidation, and falsified records all make prosecution more difficult. Rather than individual criminal culpability, constitutional remedies frequently lead to compensation.

RESEARCH QUESTIONS:

1. How is the burden of proof in custodial torture prosecutions under Section 109 distorted by the statutory architecture of the Bharatiya Sakshya Adhiniyam, 2023, especially the legislative omission of planned Section 114B?
2. How far do institutional tampering and Section 63 BSA admissibility barriers contradict necessary CCTV surveillance and compulsory medical examinations under Section 53 BNSS?
3. How do administrative sanctions under Section 218 BNSS, police journal fabrication, and witness intimidation replace criminal prosecution with non-retributive constitutional compensation?

SCOPE OF RESEARCH:

The scope of this research paper is on the rules and procedures, including the legal framework, evidence law, constitutional framework, regulating complaints of extrajudicial executions, degrading or cruel punishment, and torture at the hands of the police in India. The paper discusses the transition from the colonial criminal laws framework (the Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973, and the Indian Penal Code, 1860) to contemporary criminal laws (the Bharatiya Sakshya Adhiniyam, 2023 (BSA), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Nyaya Sanhita, 2023 (BNS). (Sanhita, 2023) (Anon., 2023) (Adhiniyam, 2023) Besides the Indian supreme court's appellate judgments, the paper also considers the statutory law provisions relating to confession by accused persons, the doctrine of special knowledge, authentication of electronic evidence, procedures for arrest, and executive approval. Also, included in this paper is empirical information relating to custodial deaths obtained from the NCRB and NHRC reports, especially police lockups.

RESEARCH METHODOLOGY:

This paper uses a doctrinal and socio-legal research methodology that combines qualitative structural evaluation, comparative legislative analysis, and critical legal reasoning. To identify similarities in confessional exclusions, statutory presumptions, and procedural safeguards, a comparative statutory analysis is carried out between the recently implemented BSA, BNSS, and BNS frameworks and the repealed colonial criminal laws. A thorough doctrinal analysis of significant appellate jurisprudence from the Supreme Court of India and several High Courts regarding custodial violence, compliance with digital surveillance, witness protection, and constitutional tort remedies under Articles 32 and 226 is incorporated into this statutory investigation. Additionally, the Istanbul Protocol's international clinical standards are critically compared with regular Indian medico-legal procedures and post-mortem certifications under Section 53 BNSS. This paper uses quantitative empirical data and longitudinal metrics from official NCRB Crime in India reports, Law Commission of India recommendations (Reports No. 113, 152, and 273), and documented magisterial inquiry findings into police station fatalities in order to ground theoretical legal doctrine in operational reality.

INTRODUCTION:

The fundamental right to physical integrity protected by Article 21 (Government of India, 1950) of the Indian Constitution, constitutionalism, and the rule of law are all completely rejected by torture in detention. The interrogation cell and the police station lock-up are confined institutional spaces with complete informational and physical inequality. The state has direct physical control over the inmate in these safe areas. The citizen in detention is totally exposed to sovereign coercion because they are deprived of their freedom, cut off from legal representation, and cut off from their family and civil society. The use of physical violence or psychological torture in these prisons occurs in an intellectual vacuum that is maintained by institutional design.

This paper conceptualizes the systemic pattern that governs custodial violence in India as the "evidence trap." The prosecution or the private complainant bears the complete burden of proving each component of an offense beyond a reasonable doubt in an adversarial criminal procedure. Nonetheless, the police create, curate, store, and oversee all contemporaneous mechanisms of documenting evidence, including the General Diary (GD) and Station Diary registers, arrest memos, inspection memos, custody logs, statutory medical requisition slips, internal communications, electronic surveillance recordings, and the actual crime scene. Because the procedural framework gives the accused torturers direct custody authority over the evidence needed to prove their guilt, the victim of custodial abuse faces an unsurmountable procedural barrier: the substantive criminal law requires proof of exceptional detail.

It was claimed that the new criminal codes, the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Adhiniyam, 2023 (BSA), represented a decolonization and modernization of Indian criminal law. Doctrinal analysis, however, shows that the evidence trap's structural roots are unaltered. While the essence of Sections 330 and 331 of the repealed Indian Penal Code, 1860 is retained in Section 120 of the BNS, which criminalizes the imposition of injury and grave hurt to elicit confessions, the evidentiary and procedural pathways to gain a conviction have become more complicated. The Law Commission of India's recommended legislative presumption of custodial causation was not included by Parliament for forty years, but the BSA maintains the confessional exclusionary restrictions under Section 23.

The infringement of technological and forensic safeguards contributes to this legislative standstill. Digital surveillance is frequently disabled, overwritten, or made legally inadmissible under the dual-certification regime of Section 63 BSA, despite the Supreme Court of India's comprehensive directives in *Paramvir Singh Saini v. Baljit Singh* (*Paramvir Singh Saini v Baljit Singh*, 2021) requiring audio-visual CCTV coverage of all police stations with eighteen months of data storage. At the same time, forensic medical reporting still operates in violation of the international principles outlined in the Istanbul Protocol, displaying systemic institutional deference to law enforcement organizations. The evidence trap is made more effective by frequent witness intimidation, the insufficiency of the Witness Protection Scheme, 2018 (Ministry of Home Affairs, 2018), and the executive shield of prior sanction under section 218 BNSS (previously Section 197 of the Code of Criminal Procedure, 1973). This systematic failure is highlighted by data from the National Crime Records Bureau (NCRB): only 26 police officers were found guilty out of 1,888 recorded custodial fatalities during a two-decade period, indicating an institutional impunity rate of almost 98.6%.

FINDINGS:

A. STATUTORY CONTINUITY AND THE EVIDENTIARY ASYMMETRY: SECTION 106 IEA TO SECTION 109 BSA AND THE CONTRADICTION OF SECTION 114B STATUTORY CONTINUITY IN INDIAN EVIDENCE LAW:

Initially, total exclusion has been all-powerful in the original Indian evidence law as a response to police brutality. Under the available Bharatiya Sakshya Adhiniyam, 2023, the same sense

has been sustained. Indian Evidence Act, 1872 in section 25 that no confession made to a police officer shall be used as evidence against the person making the confession; this provision is immediately transcribed to section 23(1) of the BSA: no confession made to a police officer shall be used as evidence against the person accused of any offense.

In order to preserve section 26 of the 1872 Act, section 23(2) of the BSA provides that no confession made by any person in police custody shall be used as evidence against the person unless it was made in the immediate presence of a magistrate.

The elimination of incentives of custodial coercion has always been core policy in the aforementioned exclusionary orders. In the past, the law makers assumed that if confessions given to police officers are not at all admissible, the police will be less encouraged to subject their victims to psychological and physical threats and harassment. However, an acute confessional paradox is observed in the operational reality of Indian police work. The institutional dependence on torture has persisted because confession-oriented outcomes continue to be central to the wider investigative culture.

Coercive interrogation remains the preferred technique to gather operational intelligence, trace physical objects, and settle cases administratively as scientific techniques of investigation, digital forensics, and inter-agency collaborations continue to be insufficiently funded.

Rescuing the "information-discovery" order under section 24 of the BSA that is the exact replica of section 27 of the Indian evidence act, 1872, makes this structural dynamic worse. Under the proviso to section 23(2), and the broader scope of section 24 BSA, where any fact is deposed to as having been discovered as a consequence of information received from any person accused of any crime while in police custody, then so much of that information that relates distinctly to that fact depended on whether it can be said that the information amounts to a confession or not-may be proved. This clause in fact strongly entices custodial extraction of statements.

Where an accused declines to disclose the location of a weapon, stolen property or circumstantial evidence, police officers are invited to employ physical force. Even where the disclosure was obtained through force, that part of the custodial statement is admissible in evidence once the physical object is recovered as per the statement. The practical statutory architecture of the BSA thus continues to encourage the very abuses that it solemnly seeks to

abolish, even while giving a lip service to protecting the accused from coercive self-incrimination under article 20(3) of the Indian constitution and section 23 BSA.

Nevertheless, the conscious abrogation of a legal presumption of custodial injuries under the Bharatiya Sakshya Adhiniyam, 2023 is a stark statutory deficiency.

Following the nationwide outcry regarding sexual violence and deaths in police stations, the Indian Law Commission issued its 113th Report (Law Commission of India, 1985): Injuries in Police Custody: Suggested Section 114B, Evidence Act in 1985. The Commission found that since these incidents occur in privacy and the only witnesses to them are police officials undergoing a code of silence about the prohibition of honesty among their members, direct eyewitnesses are almost never available in custodial violence cases. It was recommended that section 114B be inserted into the Indian Evidence Act by the Indian Parliament to redress this structural difficulty. The above recommendation proposed that: where the court is satisfied that there is sufficient evidence to establish the fact that any person was injured or otherwise killed by such person while in the custody of a police officer, then it shall be presumed that such injury or such death was caused by such police officer unless the policeman proves otherwise.

The recommendation was reiterated in Law Commission's 152nd Report (1994) and 273rd Report (2017) on Custodial Crimes and Implementation of the United Nations Convention Against Torture respectively.

Following the recommendations of the Law Commission, courts have increasingly recognized the structural impediment, and have called on the Indian Parliament to amend the law of evidence in consistency with the Law Commission's reports, as the conventional rule of the burden of proof beyond reasonable doubt is impossible in cases of custodial crimes. Interestingly, notwithstanding this repeated judicial urgency, the Indian Parliament deliberately chose not to introduce section 114B while framing and passing the Bharatiya Sakshya Adhiniyam, 2023. The usual burden of proof system, imported from 1872 colonial law of India, has been persisted to be continued.

Section 109 of the BSA (which carries forward the provisions of section 106 of the Indian Evidence Act, 1872), plays a significant role in cases of custodial death, by shifting the burden of proof in certain cases. According to section 109, if it is proved that any fact happened or is believed to have happened within the knowledge of a person who is accused of any offense, then the burden of proving that such fact did not happen or did not happen in such manner is

laid on the accused. It is usually the police who carry this burden according to the prosecution, as the victim was in police custody, and the 'circumstances under which the injuries were inflicted' are "particularly within the knowledge" of the police officer.

Yet, the practicability of section 109 BSA is largely crippled due to the immediate judicial interpretations of section 106 of Indian Evidence Act, 1872 following section 109.

It is nothing but burden of proof for the prosecution to prove beyond reasonable doubt the vital fact of the nature of the injuries sustained, and the fact that the victim was brought to the police station without any injury and was under the sole custody of the accused up to the exact point at which the injuries were sustained. Until that time, it cannot invoke section 109 BSA (by carrying 'an unbroken chain of custody documents'). Moreover, section 109 BSA does not establish any legal presumption of guilt for murder under section 103 BNS, or gross hurt to extort confession under section 120 BNS if the accused policeman does not provide an explanation or falsifies the origin of injuries sustained by the victim. It merely adopts the gaps in a chain of circumstantial evidence.

Inconsistency of Evidence Standard in BSA Explanation to section 109 BSA in light of section 114B Inconsistent evidence orders in the BSA exploration In the Indian evidential system, confessions to police: The total restriction on confessions to police by the Indian Evidence Act, 1872 under Section 25 of the Indian Evidence Act, 1872 is exactly repeated in section 23(1) of the BSA as below: No confession made to a police officer shall be used as evidence against a person accused of any offense.

This order, which is not inspired by forensic soundness, does not, of course, disincentive the aggressive extraction of physical confessions.

- Custodial Confessions and Magisterial Interventions: According to Section 26 of the 1872 Act, confessions made while in police custody were not admissible unless they were made in front of a magistrate. This precise procedural requirement is still in place under BSA Section 23(2). Because coercive questioning takes place before formal presentation before the magistrate, this precaution is routinely evaded in operational practice, tainting later statements with unrecorded threats.
- Information-Discovery Exception: Information found as a result of custodial information may be admitted under Section 27 of the 1872 Act. This precise cut-out is still present in Section 24 of the BSA. The statute actively encourages physical coercion

to find substantial evidence by permitting statements that result in the recovery of firearms or stolen items to be entered into the record. This perpetuates the very violence that the code claims to forbid.

- **Presumption of Custodial Causation:** Despite the Law Commission's 113th, 152nd, and 273rd Reports calling for the addition of Section 114B, the 1872 Act lacked a legislative presumption that would have shifted the burden of proof in cases of custodial assault. Due to the BSA's entire omission of Section 114B, victims are forced to prove station-house incidents beyond a reasonable doubt, which perpetuates near-perfect empirical impunity.
- **The Burden of Special Knowledge:** According to Section 106 of the 1872 Act, it is the person's responsibility to prove facts, particularly those that are within their own knowledge. This rule is adopted verbatim in Section 109 of the BSA. Police officers frequently circumvent its operation by creating temporal gaps in arrest registers since appellate jurisprudence views this as a rule of evidence rather than a replacement for fundamental proof of uninterrupted custody.
- **Electronic Records Admissibility:** By requiring certificates, Section 65B of the 1872 Act regulated electronic admissibility. By establishing a dual-certification scheme under Section 63(4)(c) and its Schedule, Section 63 of the BSA strengthens this obstacle. By simply refusing to provide the necessary management or technical certifications, police agencies can suppress station-house CCTV recordings thanks to this technical infrastructure.

B. SECTION 53 BNSS, MEDICO-LEGAL COMPLICITY, AND THE ISTANBUL PROTOCOL DEFICIT: THE FORENSIC DILEMMA:

Medical evidence forms the most authentic medium available for breaking into the closed space of the police station because physical violence has biological evidence in the form of bruises, abrasions, haematomas, cuts, internal bleeding, crush syndrome, and bone fractures. In this case, taking a record of the physical state of the detainee should function as an autonomous safety measure. But the system of forensic evidence collection in India suffers from structural vulnerability and subordination to the law enforcement agencies.

According to Section 53 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (replacing Section 54 of the repealed Code of Criminal Procedure, 1973), "the arrested person shall be taken to a medical officer under the employment of the Central or State Government as soon as possible" after his arrest. In accordance with the statute, the registered medical practitioner shall draw up a report about the results of the examination, including any injuries, marks of violence, and their probable date of infliction. Yet, in practical terms, this legal safety mechanism is always violated.

First, medical examinations are often performed in the physical presence of arresting or investigating policemen, and not in a clinical environment. The detainees, under the threat of continued violence when taken back to the police station, refrain from reporting the cause of their injuries or from filing a complaint regarding custodial torture.

Second, medico-legal certificates provided by the medical officers at PHCs and district hospitals tend to be superficial documents that give non-committal descriptions of the injuries in terms like "simple blunt abrasions" and "body ache without visible marks." The use of modern forms of torture, such as water submerging, hanging, sensory depriving, positional torture, and beatings using cushioned implements and roller belts, causes little or no injury to the skin surface.

Thirdly, examinations are often postponed till the bruises heal or, alternatively, are held retroactively with retroactive documentation so as to corroborate false entries in the General Diary. The failure of domestic forensics in this regard is exemplified by the fact that the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, popularly referred to as the Istanbul Protocol, has been ignored by India. Developed by the United Nations Office of the High Commissioner for Human Rights, the Istanbul Protocol lays down stringent scientific and clinical guidelines (United Nations Office of the High Commissioner for Human Rights, 2022) for the documentation of torture. It calls for comprehensive physical examinations to be done in confidential surroundings where no police officials are around. It mandates the use of psychological diagnostics in order to capture the mental suffering caused due to the trauma of torture. Most importantly, it instructs the clinician to make specific diagnoses and assess the consistency between the clinical findings and the alleged torture in terms of evidence from "not consistent" to "typical/diagnostic."

"Though guidelines have been issued at various times by the National Human Rights Commission in India, the Istanbul Protocol has not gained statutory recognition or institutionalized practice within the state medical directorates of India. Medical education curriculum in India continues to see clinical forensic medicine as a mechanized process involving routine categorization of injuries and not as a human rights diagnostic method.

In cases where custodial torture leads to death, institutional corruption manifests itself even in the process of post-mortem examination. Though BNSS Section 196(3) (which replaced the CrPC Section 176(5)) requires that the autopsy process in cases of custodial death be done by a panel of two or more doctors and be recorded through video, pressures of the executive in the local context may undermine the process. Many times autopsy reports attribute custody deaths to physiological processes like 'cardio-respiratory failure,' 'myocardial infarction' or 'acute pulmonary edema' without delving into the actual causes of trauma, shock, rhabdomyolysis, and subcutaneous hemorrhage leading to organ failure. Without an independent board of clinical forensic medicine specialists performing the post-mortem, the report becomes more of an instrument to cover up than reveal."

Section 53 BNSS has been made with the clear intention of improving the custodial protection through making it obligatory to provide a copy of the medical examination report to the accused person or his/her nominee. Nevertheless, there are flaws in this provision that further aggravate the problem of the evidence trap. It is necessary to conduct a medical examination upon arrest; however, there is no right to make regular examinations after each forty-eight hours as it was mentioned in the guidelines of the Supreme Court in the case of *D.K. Basu v. State of West Bengal* (*D.K. Basu v State of West Bengal*, 1997).

In addition, Section 53(1) BNSS makes a clear preference to government medical officers and thereby makes the right of the detainee to receive an examination from an independent medical officer non-existent. In this regard, if the detainee under intimidation does not say anything about torture during the examination, the clean certificate becomes the evidence of the absence of violence.

**C. THE SURVEILLANCE MYTH: TECHNICAL SABOTAGE, SECTION 63 BSA
ADMISSIBILITY, AND AUDIO-VISUAL REQUIREMENTS IN PARAMVIR
SINGH SAINI:**

Nearly a century after the Indian Police Act (IPC) (1861), the British Raj's penal law of record-suspension, the Supreme Court of India sought to use surveillance for police accountability. In (*Paramvir Singh Saini v Baljit Singh*, 2021), the three-judge Bench directed police departments in all jurisdictions to ensure a secure camera surveillance loop at every lock-up, outhouse, corridor, forensic lab, inquiry room, inspector's room, passageway and key control point of every police station in the Union and States.

The Court ordered high-quality night vision cameras with audio recorders, with a minimum data storage of 18 months, to ensure that victims who complain months later will be able to submit digital footage for investigation. The Court mandated monitoring at the State and district level of CCTV installation and ongoing operation through State-level Oversight Committees (SOCs) and District-Level Oversight Committees (DOCs). Yet through operational misadventures, the State police departments have 'mothballed' the potential of the digital. In custodial violence litigation, the police response routinely asserts that the CCTV cameras mysteriously failed when the assault took place or the storage server suffered a jam which caused the footage to be lost or overwritten.

States have with impunity purchased low-capacity video recorders (DVRs) and network video recorders (NVRs) with 15-30 days of insufficient storage – instead of 18 months – for the pretext of 'cost management'. The footage is lost through automatic rolling if a proper inquiry does not requisition it. Police use strategic placement of cameras to ensure visual blind spots where the victim is tortured in secret-stores inaccessible from the CCTV image.

Even if the assault were recorded, the camera footage is rendered unusable in Court under the evidentiary minefield of the *Bharatiya Sakshya Adhiniyam*, 2023.

Under Section 63 of the BSA (which implements Sections 65B and 3A (2)(2) of the Indian Evidence Act, 1872, now replaced by the BSA), every piece of evidence must be accompanied by a bi-conditional expert certification from the person operating the affected device or the technician who manages the device.

The Supreme Court, in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* (2020), resolved that a certificate by the 'maker' of the evidence is a necessary precondition for Court to consider the evidence 'admissible'. This dual-prerequisite requirement creates the evidentiary choke point against torture victims seeking to submit CCTV footage.

The digital CCTV system in a police station is physically under the lawful control of the station house officer (SHO) or the technical control room operated by a computer expert.

To tender the footage into Court, the victims must produce a Section 63 BSA certificate executed by the police authorities whose personnel tortured them with the very evidence they seek to submit. Police routinely withhold the certificate on the excuse that the police have 'lost' the original tape or that the police 'cannot verify' the digital hash values.

If the police refuse to sign the Section 63 BSA certificate, assert that the original device has been 'malfunctioned' or claim that the facility has 'degraded', the entire footage is excludable under the rule of Section 63 BSA. While the courts have some discretion to direct the police to produce the certificate under Section 94 BNSS (formerly Section 91 of the CrPC), police routinely fail to comply, explaining to the Court that the Department's IT specialist 'cannot access' the stored 'data' or that the 'hard disk' has been 'broken'. Such video evidence is effectively dead before the case ever begins, save for the High Court directive issued in the Sathankulam judicial inquiry that the police produce CCTV footage that records the custodial assault. In the absence of independent investigation by the High Court, the entire evidentiary chain is systematically sabotaged, piece by piece.

The custodial death of P. Jayaraj and his son J. Bennix in Sathankulam, Tamil Nadu, in June 2020, illustrates how every link in this evidentiary chain is forcibly disconnected. Deputy and Deputy Superintendent of Police (D/SOP) Vijayakumar led the assault on the two victims who were held under Section 144 by the Tamil Nadu government.

Both men were brutally tortured, died due to their internal injuries, and were subjected to cover-up efforts by police interrogators and magistrates alike. A judicial inquiry report by the Judicial Magistrate confirmed that police deleted the CCTV footage, fabricated police General Diaries to explain what happened to the victims, charged the medical officer to issue a fitness certificate, and criminally intimidated the sole internal eyewitness, a woman police constable. The Sathankulam investigation only survived High Court intervention: without a independent federal investigation and police protection, the entire cascade of accountability failed.

D. INSTITUTIONAL INSULATION: SECTION 218 BNSS EXECUTIVE VETO, POLICE RECORD MANIPULATION, AND WITNESS INTIMIDATION:

The systematic fabrication of official police records serves as the foundation for the institutional maintenance of lock-up impunity. Station staff are required by Section 44 of the Police Act, 1861 to keep a General Diary that details all arrests, departures, and detention movements. Section 119 BSA (previously Section 114, Illustration (e) IEA) carries a statutory presumption of regularity for these records. However, these logs are frequently altered in cases

of custodial assault. Coercive interrogations often result in days of informal, unrecorded imprisonment of detainees. The fundamental custody chain necessary to trigger the special knowledge rule under Section 109 BSA is destroyed if police use modified entry timings or fraudulently record that the detainee was freed before collapsing in order to cause catastrophic harm or death. Victims must prove an unachievable bar of contemporaneous documentary proof in order to refute these official entries.

Witness intimidation and the structural flaws of the Witness Protection Scheme, 2018 (Ministry of Home Affairs, 2018), which was upheld in *Mahender Chawla v. Union of India* (*Mahender Chawla v Union of India*, 2019), are equally effective ways to suppress oral testimony. The local district police hierarchy, the very organization complicit in the violence, directly administers protection, which is the scheme's practical fatal flaw. Important witnesses, such as co-detainees or junior officers, are forced to become hostile before their statements can be judicially recorded under Section 183 BNSS due to procedural delays in granting protective orders and persistent underfunding of state protection funds.

The prosecution faces the statutory protection of Section 218 BNSS (previously Section 197 CrPC), which forbids courts from taking cognizance of offenses committed by public personnel without prior executive permission, even in cases when contemporaneous evidence persists. Trial courts frequently reject complaints without executive approval, despite the Supreme Court's repeated rulings that torture cannot be a part of official duty (*P.P. Unnikrishnan v Puttiyattil Alikutty* (2000); *Devinder Singh (Devinder Singh v State of Punjab, 2016) v State of Punjab* (2016)). State Home Departments frequently withhold or postpone sanctions indefinitely based on internal police recommendations, thereby wielding an executive veto on judicial cognizance.

This combination of executive gatekeeping, witness intimidation, and log tampering accounts for the extreme empirical deterioration reported by the National Crime Records Bureau:

- The NCRB reported 1,004 custody deaths between 2001 and 2010, however only 342 FIRs were filed, 148 officers were charged, and 18 were found guilty (a conviction rate of 1.79%).
- Only 286 FIRs were filed, 114 policemen were charged, and 8 were found guilty (a 0.90% conviction rate) out of 884 recorded prison deaths between 2011 and 2020.
- Just 26 police officers were found guilty out of 1,888 recorded custodial deaths

throughout the course of the twenty-year period (2001–2020), resulting in an overall conviction rate of 1.38% and an effective impunity rate of more than 98.6%.

- Despite mandatory CCTV regulations, post-2021 predictions show that annual deaths are still between 95 and 110, charge-sheeting rates are less than 12%, and annual convictions are less than 1%.

These numbers show an institutional structure in which there is less than a one in seventy chance that a police officer will be found guilty of a crime related to a fatality that occurred while they were in custody.

CONCLUSION:

The findings support the hypothesis that the Bharatiya Sakshya Adhiniyam, 2023 maintains an asymmetric evidence trap. The legislature's omission of proposed Section 114B leaves victims reliant on Section 109 BSA, which is unable to break through lock-up secrecy without access to police-controlled station data. Objective protections have shown to be illusory: medical reporting under Section 53 BNSS is nonetheless compromised by clinical deference to police escorts and deviation from the Istanbul Protocol, and CCTV footage is altered and removed under Section 63 BSA dual-certification standards. The combined effect of station diary fabrication, an internal witness protection program, and Section 218 BNSS executive sanction hurdles results in an empirical conviction rate of just 1.38%.

It will take substantial legal and procedural changes to eliminate this institutional impunity such as:

- An obligatory rebuttable presumption that requires courts to assume that custodial injuries or deaths were caused by the custodial officers must be inserted by Parliament in order to enact Section 114B of the BSA. This will transfer the burden of proof affirmatively onto the state.
- Removing Section 218 BNSS Sanction for Human Rights Crimes: Since torture can never be considered an official responsibility, the Act must specifically remove

offenses of torture, custodial serious hurt, and custodial death from the requirement of prior government sanction.

- Changing Section 63 BSA's Electronic Admissibility: Electronic evidence submitted against state agencies should be exempt from the dual-certification requirement, and police failure to maintain required 18-month CCTV data must result in an immediate adverse presumption under Section 119 BSA.
- Creating an Independent Custody Management Corps: The court magistrate must oversee an independent, civilianized corps that handles lock-up administration, which must be kept apart from investigative police.
- Institutionalizing the Istanbul Protocol: Section 53 BNSS requires complete clinical privacy and independent forensic specialist boards for autopsies. Clinical standards under the Istanbul Protocol must be given binding regulatory force throughout all medico-legal investigations.

Indian criminal jurisprudence may only achieve the constitutional guaranty of human dignity under Article 21 by changing the burden of proof and taking away the tools of evidentiary control from offenders.

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